

**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER**

_____)	
)	
UNITED STATES OF AMERICA,)	8 U.S.C. § 1324c Proceeding
Complainant)	
)	
v.)	
)	OCAHO Case No. 96C00098
ENRIQUE TORRES-RODRIGUEZ,)	
Respondent.)	Judge Robert L. Barton, Jr.
_____)	

**FINAL DECISION AND ORDER GRANTING COMPLAINANT’S
MOTION AND ENTERING DEFAULT JUDGMENT**
(December 9, 1996)

I. PROCEDURAL HISTORY

On September 3, 1996, Complainant filed a one count complaint, alleging three violations of 8 U.S.C. 1324(c), with the Office of the Chief Administrative Hearing Officer (OCAHO). The complaint was mailed to Respondent by certified mail, and the return receipt card shows that Respondent received the complaint on September 9, 1996. On October 30, 1996, Complainant served a Motion for Default Judgment, asserting that because Respondent has not responded to the complaint as required by the Rules of Practice, a default judgment should be entered. See 28 C.F.R. § 68.9(a).

On November 5, 1996, I issued an Order Noting Default and Requiring Respondent to Show Cause Why Complainant’s Motion for Default Judgment Should Not Be Granted (Show Cause Order), which noted that no answer to the complaint had been received, and that the Rules of Practice require such an answer. The order specifically warned that if an answer was not served, a default judgment might be entered. This order was served on Respondent both by certified mail and by first class mail. The return receipt card shows that Respondent received the Show Cause Order on November 12, 1996.

The Show Cause Order references the Rules of Practice and specifically states that the Rules of Practice require that the Respondent file an answer to the complaint, that failure to do so shall be considered as a waiver of the right to appear and contest the allegations of the complaint, and that the Judge may enter a default judgment if no answer is filed. See 28 C.F.R. § 68.9(a) and (b). Moreover, the Show Cause Order directs Respondent to file an answer within twenty days of the date of the Order and to show good cause why the answer was late. The Show Cause Order further states that if Respondent fails to comply with the Order, I may grant Complainant's motion for default judgment and enter a civil penalty against Respondent.

II. DISCUSSION

With respect to the failure to file an answer to the complaint, as was explained in the Show Cause Order, the Rules of Practice require a respondent to serve an answer to the complaint and provide that failure to do so shall constitute a default. 28 C.F.R. § 68.9. The Rules also provide that a party shall be deemed to have abandoned a request for hearing if the party or his representative fails to respond to orders issued by the Administrative Law Judge. 28 C.F.R. § 68.37(b). Failure to respond to an order to show cause invites a judgment of default, especially where, as here, it appears that Respondent has ignored the Court's orders and de facto has abandoned the request for a hearing. See United States of America v. Broker's Furniture and Manufacturing, Inc., et. al., 5 OCAHO 789 (1995); United States v. Hosung Cleaning Corp., 4 OCAHO 681 (1994). Even in cases where they appeared without counsel, parties that failed to obey Judges' orders were found to have abandoned their requests for hearing or to have abandoned their complaints. United States v. Erlina Fashions, Inc., 4 OCAHO 656 (1994); Holquin v. Dona Ana Fashions, 4 OCAHO 605 (1994); Brooks v. Watts Window World, 3 OCAHO 570 (1993); Speakman v. Rehabilitation Hospital of South Texas, 3 OCAHO 476 (1993); Palancz v. Cedars Medical Center, 3 OCAHO 443 (1992).

Through the service of the Motion for Default and the Show Cause Order, Respondent was notified that a Motion for Default Judgment had been filed, and that a default judgment would be entered if no answer was filed to the complaint. Given the failure by Respondent to answer the Complaint or take any other action to defend his interests in this matter, I must conclude that Respondent has abandoned his Request for Hearing. Respondent is in default not only for failure to answer the Complaint, but also for failure to respond to the Show Cause Order. See 28 C.F.R. §§ 68.9(b) and 68.37(b)(1).

III. FINDINGS, CONCLUSIONS AND ORDER

1. Complainant's Motion for Default Judgment is granted;
2. Each and every paragraph of the Complaint, including the prayer for relief, has been admitted by Respondent by his failure to answer the Complaint;
3. Respondent shall cease and desist from violating 8 U.S.C. § 1324c(a)(2).
4. Respondent shall pay a civil money penalty of \$1,500;
5. The notice of hearing in this case is canceled.

ROBERT L. BARTON, JR.
ADMINISTRATIVE LAW JUDGE

NOTICE REGARDING APPEAL

Pursuant to the Rules of Practice, 28 C.F.R. § 68.53(a)(1), a party may file with the Chief Administrative Hearing Officer (CAHO) a written request for review together with supporting arguments. The CAHO also may review the decision of the Administrative Law Judge on his own initiative. The decision issued by the Administrative Law Judge shall become final within thirty days of the date of the decision and order unless the CAHO modifies or vacates the decision and order. See 8 U.S.C. § 1324c(d)(4) and 28 C.F.R. § 68.53(a).

Regardless of whether a party appeals this decision to the Chief Administrative Hearing Officer, a party adversely affected by a final order issued by the Judge or the CAHO may, within 45 days after the date of the final order, file a petition in the United States Court of Appeals for the appropriate circuit for the review of this order. See 8 U.S.C. § 1324c(d)(5).

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of December, 1996, I have served the foregoing Final Decision and Order Granting Complainant's Motion and Entering Default Judgment on the following persons at the addresses shown by first class mail, unless otherwise noted:

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